

**DEPARTMENT OF INSURANCE****Legal Division, Policy Approval Bureau**

45 Fremont Street, 24th Floor

San Francisco, CA 94105

TEL: 415-538-4144

FAX: 415-904-5729

www.insurance.ca.gov

**MEMORANDUM**

**TO:** Certain Interested and Affected Parties

**FROM:** Nancy N. Hom

**DATE:** March 16, 2006

**RE:** Invitation to Prenotice Public Discussions on Proposed Regulations

Pursuant to California Government Code Section 11346.45, California Insurance Commissioner John Garamendi will hold prenotice public discussions to gather information concerning the possible adoption of a proposed amendment to the California Code of Regulations Title 10, Chapter 5. The Commissioner is considering promulgating a new section (or sections) which would apply to disability income insurance policies. The section would prohibit insurers from adding benefit triggers, or conditions, to the payment of benefits which exceed the requirements set forth in the definition of total disability as set forth in Moore v. American United Life Ins. Co. (1984) 150 Cal. App. 3d 610, 632; 197 Cal. Rptr. 878, 892. For example, conditions such as regular medical care, appropriate medical care, impairments in activities of daily living ("ADL's"), cognitive impairments, no-working requirements, loss of income standards, and vocational rehabilitation would be prohibited as conditions to receiving a benefit under a policy. In addition, the proposed regulation would prohibit benefits from being discontinued or coverage terminated for such reasons. The proposed regulation would also prohibit insurers from using a "national economy" or other similar standard to evaluate the insured's occupation under the California definition of total disability.

The new section (or sections) would be added to existing regulations based on the authority and reference set forth in Government Code sections 11349(b) and 11349(e); Moore v. American United Life Ins. Co. (1984) 150 Cal. App. 3d 610, 632; 197 Cal. Rptr. 878, 892; Insurance Code sections 10291.5(e), 12921(a), and 12926.

You are hereby invited to participate in these informational prenotice public discussions. The purpose of these discussions is to gather information and to provide certain interested and affected persons with an opportunity to present statements or comments to the Commissioner concerning the possible adoption of the regulation(s) described above. The Commissioner also seeks data on the impact that various benefit triggers or

conditions have on claimants.

Public discussions will be held on the following date, at the times and location specified below:

Date:	Tuesday, April 18, 2006
Location:	California Department of Insurance 45 Fremont Street 22 <sup>nd</sup> Floor Hearing Room San Francisco, CA 94105
Time:	10:00 a.m. to 5:00 p.m. (concluding earlier if the participants in attendance have completed their comments)

The facility to be used for these public discussions is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the undersigned by April 10, 2006 in order to make special arrangements.

Space is limited so we are asking that you limit your representation to one individual.

Participants should be prepared to present specific comments on, and/or alternate regulation language for, the regulation(s) under consideration at the scheduled public discussion.

All persons are invited to submit written statements.

Please be advised that participation in these prenotice discussions will be in addition to, and not in substitution for, any participation in a formal rulemaking process. This invitation to prenotice public discussions does not constitute a Notice of Proposed Action under the Administrative Procedure Act. Consequently, comments (oral or written) received in connection with these prenotice discussions will not be included in a rulemaking file, which will not be opened until the time a formal notice is issued. Similarly, the Department is not required to respond to comments received before that time. For this reason, if a rulemaking file is subsequently opened and you wish to have comments included in the rulemaking file or to require the Department to respond to comments as part of the process by which it adopts a proposed regulation, you must present your comments during the formal public comment period according to the procedures outlined in the Notice of Proposed Action at the time that document is issued, regardless of whether the comments have been made in connection with these prenotice public discussions. The Commissioner nonetheless welcomes your participation in these discussions, and welcomes the opportunity to consider all of the information provided.

All inquiries regarding the proposed regulation under consideration and the prenotice

March 16, 2006

Page 3

public discussion should be directed to the undersigned.

The Department asks participants to RSVP by April 10, 2006.

---

Nancy N. Hom  
Staff Counsel III  
California Department of Insurance  
45 Fremont Street, 24th Floor  
San Francisco, CA 94105  
Phone: (415) 538-4144  
Fax: (415) 904-5729  
**E-mail: [homn@insurance.ca.gov](mailto:homn@insurance.ca.gov)**